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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,834

02/28/2007

Johann Manner

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6903

22429 7590 09/02/2010  
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1786

MAIL DATE

DELIVERY MODE

09/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/560,834	MANNER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cheryl Juska	1786	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed July 21, 2010 has been entered. No actual amendment has been made to the claims. The pending claims are 1-4, 6-8, 10, and 12 with claim 12 being withdrawn as non-elected.

### ***Claim Rejections - 35 USC § 103***

2. Claims 1-4, 6-8, and 10 stand rejected under 35 U.S.C. 103(a) as obvious over US 6,235,392 issued to Luo et al. as set forth in section 6 of the last Office Action (Non-Final Rejection mailed March 24, 2010).

3. Applicant has not amended the claims in an attempt to overcome the prior art rejection. Rather, applicant traverses by arguing the examiner's assumption that Luo's fibers having a denier of 3.1-19.5 would necessarily possess the claimed V ratio is faulty because it is based upon hindsight of the present invention and the presumption of a continuous and linear gradient of the ratio V against titer (Amendment, page 4, 5<sup>th</sup> paragraph). The examiner respectfully disagrees. Fibers of like structure and chemical features (i.e., like lyocell composition and like linear density of 6-21.7 dtex) will necessarily have like properties (i.e., like ratio V). Since the prior art teaches the claimed structural and chemical features, it is reasonable presume, without hindsight of applicant's invention, that the prior art fibers will have the claimed ratio V.

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Additionally, the fact that ratio V is not a continuous and linear gradient does not preclude the prior art from possessing the same gradient. Applicant's discovery of a sharp change in the expected continuous and linear gradient does not preclude the prior art from possessing the same gradient for like lyocell fibers of like linear density. Discovery or recognition of an inherent property is not invention.

4. Applicant also traverses the rejection by arguing the fibers of Luo are produced from specific spinning processes which result in irregular diameters (Amendment, paragraph spanning pages 4-5 - page 5, 3rd paragraph). In response, applicant's argument is not commensurate in scope with the claimed invention. Specifically, applicant does not limit the process of making the claimed lyocell fibers or the cross-sectional shape thereof. Not only do the claims not place any limitations on these factors but the specification teaches the fibers are "spun...in a known manner" and is silent with respect to cross-sectional shape. Thus, it appears the claimed ratio V is not dependent upon the process of making or the cross-sectional shape. Hence, applicant's argument is found unpersuasive.

5. In response to applicant's assertion that Luo's examples employ linear densities far below the claimed range (Amendment, page 5, 4<sup>th</sup> paragraph), it is noted a reference is not limited to its working embodiments. Luo clearly teaches fibers having a denier of 3.1-19.5 (3.4-21.7 dtex) are within the scope of the invention.

6. In response to applicant's assertion that Luo is silent regarding the claimed applications for the lyocell fibers (Amendment, page 5, 5<sup>th</sup> paragraph), the reference does teach teaches the lyocell fibers are used to make yarns, woven fabrics, and/or nonwoven fabrics (abstract and col. 1, lines 9-12). The recited applications of carpets, textile flooring materials, wall linings, and/or

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decoration materials, are known in the art to make use of regenerated cellulose fibers. As such, it would have been readily obvious to one skilled in the art to employ the lyocell fibers of Luo in said applications.

7. In conclusion, applicant has still not shown the lyocell fibers disclosed by Luo having a titer of 6-21.7 dtex do not possess the claimed ratio V. Nor, has applicant shown that the present lyocell fibers having the claimed titer are structurally or chemically different than those disclosed by Luo. As such, applicant's arguments are insufficient to overcome the prior art rejection.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner can be emailed at [cheryl.juska@uspto.gov](mailto:cheryl.juska@uspto.gov) or the examiner's supervisor, D. Lawrence Tarazano can be reached at 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1786

cj  
September 1, 2010